

**IN THE U.S. DISTRICT COURT FOR MARYLAND,
SOUTHERN DIVISION**

BEYOND SYSTEMS, INC.)	
)	
Plaintiff)	
v.)	Case No.PJM 08 cv 0921
)	
WORLD AVENUE USA, LLC, et al.)	
Defendants)	
_____)	

**DEFENDANT WORLD AVENUE USA, LLC’S LOCAL RULE 104 CERTIFICATE
REGARDING ITS MOTION TO COMPEL DEPOSITION OF NON-PARTY WILLIAM
J. WAGNER**

Pursuant to Local Rule 104, Defendant WORLD AVENUE USA, LLC (“WAUSA”), hereby certifies that a good faith effort has been made to work out by agreement the subject matter of its Motion to Compel Deposition of (“Motion to Compel”) Non-Party William J. Wagner, but such efforts have been to no avail. The issue before the Court is whether William Wagner should comply with the Subpoena.

On February 18, 2010, WAUSA issued a letter to Wagner’s counsel -- who also represents Plaintiff BSI -- enclosing a draft unsigned and unissued Notice of Taking Deposition of William Wagner, and Subpoena to William Wagner and inquired: “Kindly advise if there is any conflict for the indicated dates and times.” *See* Composite Exhibit 4 to Motion to Compel. For the fourteen (14) day period from February 18, 2010 to March 1, 2010, Wagner’s counsel did not provide deposition dates.

On March 7, 2010, Wagner’s counsel noted that he had received a Notice of Taking Deposition of William Wagner on February 18, 2010. *See* Exhibit 7 to Motion to Compel. WAUSA’s counsel corrected the record on March 7th, and noted:

Let us start with a clarification of the record. On February 18, we did not send a Notice and subpoena for video inspection of Wm Wagner residence on 4/1/10, and a Notice and subpoena for video depo of Wm Wagner in DC on 4/5/10. Instead, we provided draft unsigned subpoenas and notices transmitted with a cover letter asking for dates for same, which were never provided, and thus, the notice and subpoena were issued on March 2nd.

See Exhibit 8 to Motion to Compel. Wagner's counsel did not correct this rendition of the facts, but responded and stated: "as to subpoenas to wm wagner and alton burton, I expect to issue timely objections on substance." See Exhibit 8 to Motion to Compel. Wagner's counsel did not claim any issue with the noted dates and, in fact, never cooperated with the attempt to coordinate the noted dates. *Id.*

On March 14, Wagner's counsel inquired whether WAUSA would accept an Affidavit in lieu of deposition. See Exhibit 9 to Motion to Compel. On March 15, WAUSA responded that it intended to proceed with a deposition. See Exhibit 9 to Motion to Compel. On March 16, Wagner's counsel objected to the taking of the deposition -- but did not object to the date. See Exhibit 10 to Motion to Compel. On March 14-15th, the issue of the deposition was verbally discussed between counsel for Plaintiff/William Wagner, and counsel for Defendant WAUSA.

On March 19th -- after the Court permitted the deposition of Alton K. Burton to proceed -
- WAUSA's counsel tried again to resolve the issue in writing, but again, received no response.

Dated: March 22, 2010

Respectfully submitted,

Attorneys for World Avenue USA, LLC

GREENBERG TRAURIG, LLP

/s/

Sanford M. Saunders, Jr., Esq.

USDC, MD #4734

saunderss@gtlaw.com

Nicoleta Burlacu, Esq.

BurlacuN@gtlaw.com

Admitted Pro Hac Vice

GREENBERG TRAURIG, LLP

2101 L Street, NW, Suite 1000

Washington, DC 20037

Telephone: 202-331-3100

Facsimile: 202-331-3101

--and--

Kenneth Horky, Esq.

Florida Bar No. 691194

horkyk@gtlaw.com

John L. McManus, Esq.

Florida Bar No. 0119423

mcmanusj@gtlaw.com

Admitted Pro Hac Vice

GREENBERG TRAURIG, P.A.

401 East Las Olas Boulevard, Suite 2000

Fort Lauderdale, FL 33301

Telephone: 954-765-0500

Facsimile: 954-765-1477